

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB STORY**, on January 29, 2001 at 9:00 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Bob Story, Chairman (R)
Rep. Ron Erickson, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Keith Bales (R)
Rep. Joe Balyeat (R)
Rep. Gary Branae (D)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. Rick Dale (R)
Rep. Ronald Devlin (R)
Rep. John Esp (R)
Rep. Gary Forrester (D)
Rep. Daniel Fuchs (R)
Rep. Verdell Jackson (R)
Rep. Jesse Laslovich (D)
Rep. Trudi Schmidt (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. David Wanzenried (D)

Members Excused: Rep. Roger Somerville, Vice Chairman (R)

Members Absent: None.

Staff Present: Jeff Martin, Legislative Branch
Rhonda Van Meter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 381, 1/24/2001
Executive Action: HB 248; HB 274; HB 70

HEARING ON HB 381

Sponsor: REPRESENTATIVE MARK NOENNIG, HD 9, Billings

Proponents: Dolores Cooney, Department of Revenue
Stuart Doggett, Montana Land Title Association

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.6}

REP. NOENNIG said this bill was requested by the Department of Revenue to address a problem notifying owners of undivided interest of property. Undivided interests are those that have not been segregated by a boundary but each person owns an undivided share of the property. There is a notice of classification and assessment of the property that goes out to the owners. Should the property taxes become delinquent, any person can redeem property from a tax certificate. There has been difficulty mailing notices to all of the owners, because a lot of them have not been identified. When a deed is recorded, an address will be required to be given so it is known where the tax notices should be mailed to. This bill allows the Department to mail the notice to a single owner but still assesses the taxes against the whole property and all of the owners. It requires the owners to provide a name and address of where they want the notices sent. The statute allows the Department to send notice to anybody who requests a notice of classification. He gave an example of a property tax situation on a condominium. There needs to be a clear distinction between the procedure for notice and assessment versus application for a tax deed, and this is addressed in Section 2 of the bill.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 10.2}

Dolores Cooney, Department of Revenue, said the bill allows the Department in case of multiple undivided ownership of a single parcel to send a single notice of assessment to an address outlined by the group of owners. Undivided interest most often occurs in tribal lands and mining claims, and she gave an example. A Supreme Court case in 1998 out of Jefferson County was an example of undivided interest being separately assessed. Subsequently, one of the taxpayers did not pay the taxes and it went up for tax sale due to delinquent payment. The other owner did not receive notice of the tax sale, so this was the court

challenge. The ruling says undivided interests need to be assessed as a whole and the owners notified. This bill addresses sending a single notice of assessment, delineates that the owners of the undivided interest will provide an address of where they want the notice to be sent but allows other undivided interests holders of that property to request a copy of that assessment, and provides an owner who has paid all the taxes on an undivided interest property has a lien against the entire property. She handed out examples of undivided properties. **EXHIBIT(tah23a01)**, **EXHIBIT(tah23a02)**, **EXHIBIT(tah23a03)** Through an amendment, they would provide the additional owner names to the treasurer.

Stuart Doggett, Montana Land Title Association, said they like the process in this bill and believe it would be good for title insurers.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 14.7}

REP. FORRESTER asked if it was felt the Supreme Court decision was wrong. **Dolores Cooney** said the Supreme Court basically said the county was in error in assessing the two pieces of undivided interest separately, as it should have been assessed as a single parcel because there is no clear delineation between two pieces of undivided interest. **REP. FORRESTER** asked that if this bill would have been law at the time of the Supreme Court case if the outcome would have been different. **Dolores Cooney** said the case involved a tax sale. The issue of the notice of assessment was a side issue. If the second owner did not receive notification, then the case would still be the same.

REP. DEVLIN asked if the owners would designate who the single notice would get sent to. **Dolores Cooney** said this is correct.

REP. DEVLIN asked if the Department would ever assign this designated address. **Dolores Cooney** said the bill provides that the taxpayers will need to choose the address where the notice needs to be sent. In the event there is no response from the taxpayer, the Department will send it to the first owner listed on the deed. **REP. DEVLIN** asked how the first person on a list of owners is determined. **Dolores Cooney** said the first name is generally the first owner filing.

REP. ERICKSON asked how a partial owner of a piece of property would know what they needed to pay in taxes if they do not receive a notice under this bill. **REP. NOENNIG** said when the notice of assessment is sent, it will be sent to one address.

The taxes are assessed against the entire property of undivided interest. Either the total amount of taxes are paid or not. If the taxes are not paid, the whole parcel is subject to going up for tax sale in June of the tax year in which the taxes are delinquent. If no one bids on this property, the parcel is turned over to the county. There is a 36-month period in which those taxes can be redeemed, and if they are not, a proceeding is instituted for a tax deed. Then there is a 60-day notice that has to be given to everybody who has an interest in the property.

REP. DEVLIN asked that if someone pays all of the taxes on a parcel they would have legal standings to collect from the other interest holders. **REP. NOENNIG** said this is correct. Presently someone has that right anyway, but in this bill, they would have a lien on the other property interests to secure the obligation.

CHAIRMAN STORY asked if the Department would now be required to put forth more effort to notify landowners. **REP. NOENNIG** said this could be an argument. **CHAIRMAN STORY** asked if the first notice received is what the assessed value of the property is. **Dolores Cooney** said yes. **CHAIRMAN STORY** asked if then eventually a tax bill is received. **Dolores Cooney** said yes. **CHAIRMAN STORY** asked if HB 381 would address the assessed value or the tax bill. **Dolores Cooney** said this bill is addressing who the assessment is to be addressed to. The assessment notice would go to this address, and subsequently the tax bill to the same address. **CHAIRMAN STORY** asked if this is proposing only one tax bill to be sent. **Dolores Cooney** said yes. **CHAIRMAN STORY** asked if the person receiving the bill was responsible for collecting the tax money from all of the other owners. **Dolores Cooney** said this is correct. **CHAIRMAN STORY** asked if one owner was to pay all of the taxes over many years then that owner could claim the other owners did not pay their taxes and ultimately get all of the land. **REP. NOENNIG** said yes. Currently you could let the taxes go delinquent and purchase the property at tax sale, and if none of the owners came forward to pay the taxes, you could start proceedings for the tax deed. Another option is to just try and pay your proportionate share of the taxes, but this will not be accepted because there is only one tax statement for the total amount of taxes owed. The third option is to pay the full amount of taxes, and then you will have a lien on the rest of the property; however, this lien has no priority date, so until you win a judgement that someone owes you the money, the situation will remain the same. **CHAIRMAN STORY** asked what the cost would be of a title search for notification of all parties in a tax deed proceeding and who would bear that cost. **Dolores Cooney** said the tax sale process is in the county treasurer's office, so they would probably bear the cost.

REP. WADDILL asked if this bill would save a significant amount of administration for the Department of Revenue. **Dolores Cooney** said current practice is a combination of undivided interest being assessed separately and as a group. The bill was brought forward because there was no provision to clearly assess the undivided interest as a single notice. Undivided interest property should not be separately assessed because it is a parcel as a whole, and the taxes should be paid as a whole. When there are separate assessments, this does present a problem similar to the court case mentioned.

REP. DEVLIN asked how another partial owner would know the taxes were being paid on the property. **REP. NOENNIG** said that owner would have to find out on their own. The benefit is that the Department does not have to go through the time and expense of going through all of the records to find all of the owners or hiring a title company to do this. **REP. DEVLIN** asked if all of the owners at some time would receive a notice that the property was being put up for tax deed. **REP. NOENNIG** said the 60-day notice mentioned before allows for the county treasurer to notify everybody with an interest.

REP. SCHMIDT asked if most people know they have an interest in property. **REP. NOENNIG** said ordinarily yes, but with mineral interests it can be so fractionated by inheritance that sometimes they might not. **REP. SCHMIDT** asked if there are enough cases to justify that this is needed. **REP. NOENNIG** said there are.

REP. FORRESTER asked what happens if attorneys dealing with an estate are late notifying the owners and the property goes up for tax deed. **REP. NOENNIG** said if the probate took that long, it is possible one of the heirs would not receive a notice, but the representative of the estate should have gotten a notice. Missing a deadline would be malpractice of an attorney and there could be recourse.

CHAIRMAN STORY asked what the recourse would be if there are partial owners paying their money to the responsible party and that person is not paying the taxes. **REP. NOENNIG** said if you own an undivided interest in property and have informally designated one of the owners of the group to pay the taxes, then that person has a fiduciary responsibility to take care of payment of those taxes. **CHAIRMAN STORY** asked how the Department will deal with condominiums where the land is still in common. **Dolores Cooney** said condominiums have specific statutes that apply to them that detail exactly how assessment will be made through a condominium declaration. Most often in this declaration there is a home divided interest and an undivided

interest of the common area. This bill would not affect this particular case.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 11}

REP. NOENNIG said the bill is for efficiency and will preclude the Department of Revenue from having to do an exhaustive title search every time they send out a notice of assessment. It has the additional benefit that is someone does pay someone else's share, they have a lien against that share.

EXECUTIVE ACTION ON HB 248

{Tape : 1; Side : B; Approx. Time Counter : 15.6}

Motion: **REP. JACKSON** moved that **HB 248 DO PASS.**

Discussion:

REP. DEVLIN said there was possibly an amendment regarding the fee structure. **CHAIRMAN STORY** said there are no amendments. **REP. WAITSCHIES** asked if the "big bill" passes this would be a waste. **CHAIRMAN STORY** said the intent was to look more at the funding of state government, whereas the "big bill" does not do much with funding. **REP. DEVLIN** asked if this was done 2-3 years ago. **CHAIRMAN STORY** said between the 1997 and 1999 session there was a property tax study committee made up of legislators that traveled throughout the state and talked about sales tax replacing property tax. There was no discussion about income tax. **REP. BALES** said the tax system has been studied, but there is a difference with this bill in that it tries to get groups together other than just the legislators to address all of the ramifications of tax structure on businesses. He wondered if fees should also be included in this, because in ways they have a similar affect as taxes and should be studied at the same time. **CHAIRMAN STORY** asked if the title of the bill is broad enough to include fees. **Jeff Martin** said he did not think so.

Motion: **REP. ESP** moved that **HB 381 BE AMENDED.**

Discussion:

CHAIRMAN STORY asked if amending the bill to include fees would be difficult. **Jeff Martin** said no. **REP. FUCHS** said the bill seems to already include fees in it. **REP. ESP** said that it might

make sense to specifically add fees to the bill. **REP. WADDILL** asked if the even number of 16 members might allow a blockage and if this should possibly be changed. **CHAIRMAN STORY** said this is a different issue than the fees being discussed right now. **REP. ERICKSON** said he is against the idea of putting fees in the bill, as tax policy itself is such a huge issue that it will fully take up the time of the proposed committee. Addressing fees would distract from the larger issue of looking at tax structure. **CHAIRMAN STORY** asked if the thinking of fees was more regarding local service fees rather than state government fees. **REP. ESP** said he was more considering the major fees that might have some impact on tax policy. **REP. WANZENRIED** asked what the proposed language would be. **REP. ESP** said he was thinking of including language regarding fees in subsection 6. **REP. WANZENRIED** said that would be far more encompassing than the sponsor indicated earlier. **REP. ESP** said it may be more of a complicated issue than they are willing to get into at this time. **Jeff Martin** suggested having language in a separate subsection for examining fees at the discretion of the committee. **REP. BALES** said he was considering reoccurring fees on a yearly basis that are part of the cost of doing business and could be construed as a tax, not that of a one-time fee such as a marriage license. **REP. WAITSCHIES** said he agrees that having the proposed committee look at tax policy and fees would be too large. **REP. FUCHS** said he agrees with Jeff Martin's proposed language that review of fees should be at the discretion of the committee. **REP. SCHMIDT** said this is big enough already, and it should not include fees. **REP. ESP** said he would like to withdraw his motion.

REP. BALYEAT said this bill appropriates \$45,000 for a study that proposes all of the different people serving on the committee allegedly come to a consensus about what to do about tax policy. The studies have already been done, and the legislators do not even use these. The studies done by professionals show that tax structure has relatively little to do with economic growth as compared to other factors such as the level of overall taxes. This is just throwing money away. **REP. SCHMIDT** said she does not believe the proposed committee could come to any kind of consensus, so she is inclined to vote against the bill. **REP. BRANAE** asked if interim studies are prioritized. **CHAIRMAN STORY** said this is not the type of interim study that come through on the resolutions. It would be a special committee set up with an appropriation to go with it. **REP. FORRESTER** said if this bill was passed it would be referred to appropriations. **REP. BALYEAT** said it is not responsible for this committee to pass the buck to appropriations. **REP. FUCHS** said it is the responsibility of the legislature to continue to address tax reform and try to build a consensus of what needs to be done. **REP. BALES** said the

legislature has tried in the past to get balance in the tax structure. The thought behind this bill was to study tax policy with a non-partisan group who would look at the different ramifications and possible tax structure the state should move forward with. The findings would not only be taken to the legislature but to the people to show them the state has addressed this issue and come up with some possible solutions. If this legislature is not ready to address tax reform, then this committee needs to be formed to do it. **REP. BALYEAT** said this bill should be looked at toward the end of the session because it is unknown whether this legislature will do something to accomplish tax reform.

Motion/Vote: **REP. BALYEAT** moved that **HB 248 BE TABLED**. Motion carried 16-4 with Bales, Esp, Forrester, and Laslovich voting no.

EXECUTIVE ACTION ON HB 274

{Tape : 2; Side : A; Approx. Time Counter : 12.8}

Motion: **REP. DALE** moved that **HB 274 DO PASS**.

Discussion:

REP. BALYEAT said this bill is redundant and a bad idea. There is already an Elderly Home Owner Credit which gives up to \$1000 back as a refundable income tax credit. There is a phase-out formula with it so not as much is given back to the wealthy as to the low income people. He gave an example of a calculation for this credit. Under this bill, the house and one acre would have to be separated out, and this creates a record keeping mess for local governments, because a lot of homes are on more than one acre. **REP. FORRESTER** referred to the fiscal note and said this would be a large impact to the local governments. The home owner tax credit already takes care of a lot of the problems this bill addresses. **REP. ANDERSEN** said the tax burden would be shifted to some of the young families who are home owners, and it is not fair to do this.

Motion/Vote: **REP. ESP** moved that **HB 274 BE TABLED**. Motion carried 19-1 with Waddill voting no.

EXECUTIVE ACTION ON HB 70

{Tape : 2; Side : A; Approx. Time Counter : 18.6}

Motion: **REP. ERICKSON** moved that **HB 70 DO PASS**.

Motion: REP. DEVLIN moved that HB 70 BE AMENDED.
EXHIBIT(tah23a04)

Discussion:

REP. DEVLIN said this amendment proposes leaving the existing cap in place at \$30,000. The figure on the fiscal note would drop to \$847,000 of impact. **EXHIBIT**(tah23a05) REP. ERICKSON said he reluctantly agrees to the amendment because of the incredible cost of impact. CHAIRMAN STORY asked what kinds of income are included in the \$30,000. REP. BALLYEAT said this only applies to taxable Federal adjusted gross income, so it does not include non-taxable Social Security. CHAIRMAN STORY asked if certain IRA's are taxable upon withdrawal and some are not. REP. BALLYEAT said this is correct. Only the taxable income is included.

Motion/Vote: REP. DEVLIN moved that HB 70 BE AMENDED. Motion carried 20-0.

Motion: REP. ERICKSON moved that HB 70 DO PASS AS AMENDED.

Discussion:

REP. BALLYEAT said even though the amendment reduces the cost, he is going to vote against the bill. It is bad policy to have all kinds of targeted tax breaks. Even though the state employees were given a promise years ago, this is not the best way to deal with it, because if this problem is dealt with through tax policy, all retirees have to be given special tax breaks. Leo Berry had said they are trying to address the problem in a different way, and they have another bill before the legislature to increase the inflation factor for retirement benefits. This way only state retirees are addressed and something is not being done that covers all other retirees. There needs to be overall tax reduction and simplification in Montana, and these little targeted credits that separate people into classes make it more difficult to do this. REP. ERICKSON said Leo Berry testified for this bill. There is a fairness issue and inflation issue, but not just state retirees have been hit because of their fixed income. This does help more than just state employees. REP. WAITSCHIES said he is against the bill because the retired people already get a doubled exemption on their income taxes which is occasionally adjusted for inflation. REP. BALLYEAT said it is true there was inflation index put into the \$3600 exclusion amount, but in the interim the legislature has added additional things to try to help the elderly and retirees, such as the added \$800 per person interest exclusion for the elderly and an increase in the Elderly Home Owner Credit to \$1000. REP. WADDILL

said he has a lot of constituents that have a fixed income and are barely surviving. This does shift the tax burden to other people, but it shifts it to people who can make up the difference by getting another job. **REP. SCHMIDT** asked what the double exemptions are. **REP. WAITSCHIES** said the personal exemption doubles when you are 65 years or older. **REP. SCHMIDT** said she is concerned about the Elderly Home Owner Credit, because it applies to people who earn more. **REP. BALLYEAT** said the cut off level is about \$45,000. When it was increased from \$400 to \$1000, it was a substantial increase in the amount elderly people get back. **REP. WANZENRIED** said a promise is a promise, and the state employees were given a promise. Do not vote against this just because it is not overall good tax policy reform. **REP. WAITSCHIES** said the promise was not made by the legislature but by recruiters, so we should not feel responsible for this. **REP. FORRESTER** said the legislature approves the budget, so he believes in effect the labor agreements were approved by the legislature. **REP. ERICKSON** asked if this was specific legislation. **Jeff Martin** said the full amount of state retirement income was exempt from taxation and \$3600 for everyone else, and this was in statute. **REP. BALES** said he agrees some action should be taken to address a wrong that may have been done to state employees, but it needs to be addressed specifically, and this bill does not do this. It is simply a bill that will affect every retiree and not just that problem. It is a problem of fairness to address the harm done to the state employees by giving the people who were not harmed the same benefit, and if this is passed, the ones who did not suffer will get the same benefit as the ones that did. **REP. BALLYEAT** reminded the committee that prior to the court case, state employees' contributions into the retirement system were with after tax dollars, so they did not get a tax deduction for the money they were putting in. The money coming out of the retirement system was tax free. When the court case ruled their retirement withdrawals had to be taxable, there was also a change in state policy that now the contributions into the retirement system would be with pre-tax dollars. The state has been consistent and the problem is not as large as some state retirees would lead us to believe. He asked if there have been other attempts to try to mitigate these problems. **CHAIRMAN STORY** said there have been a number of bills, but they have never been tied to this. **Jeff Martin** said there is a committee that spends a great deal of time talking about the past and proposing legislation. **REP. SCHMIDT** asked if the interim committee endorsed this bill. **REP. ERICKSON** said the interim committee endorsed SB 173 that has this feature in it to go from \$3600 to \$4700. This bill, HB 70, would add an inflationary factor to the \$4700 every year. **REP. BALLYEAT** said

SB 173 does have a provision that is similar, and this is a good reason to table this bill.

Motion/Vote: REP. ERICKSON moved that HB 70 DO PASS AS AMENDED. Motion failed 9-11 with Branae, Carney, Cyr, Erickson, Forrester, Laslovich, Schmidt, Waddill, and Wanzenried voting aye.

Motion/Vote: REP. BALLYEAT moved that HB 70 BE TABLED. Motion passed 11-9 with Branae, Carney, Cyr, Erickson, Forrester, Laslovich, Schmidt, Waddill, and Wanzenried voting no.

ADJOURNMENT

Adjournment: 10:58 A.M.

REP. BOB STORY, Chairman

RHONDA VAN METER, Secretary

BS/RV

EXHIBIT (tah23aad)